Calendar No. 752

82d Congress, 1st Session | SENATE | Report No. 796

AMENDING THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

September 24 (legislative day, September 19), 1951.—Ordered to be printed

Mr. Robertson, from the Committee on Banking and Currency, submitted the following

REPORT

together with the

MINORITY VIEWS

[To accompany S. 2170]

The Committee on Banking and Currency, to whom was referred the bill (S. 2170) to amend the Defense Production Act of 1950, as amended, having considered the same, report favorably thereon and recommend that the bill do pass.

The bill amends section 402 (d) (4) of the Defense Production Act as amended.

Section 104 (e) of the Defense Production Act Amendments of 1951 added to subsection (d) of 402 the following new paragraph:

(4) After the enactment of this paragraph no ceiling price on any material (other than an agricultural commodity) or on any service shall become effective which is below the lower of (A) the price prevailing just before the date of issuance of the regulation or order establishing such ceiling price, or (B) the price prevailing during the period January 25, 1951, to February 24, 1951, inclusive. Nothing in this paragraph shall prohibit the establishment or maintenance of a ceiling price with respect to any material (other than an agricultural commodity) or service which (1) is based upon the highest price between January 1, 1950, and June 24, 1950, inclusive, if such ceiling price reflects adjustments for increases or decreases in costs occurring subsequent to the date on which such highest price was received and prior to July 26, 1951, or (2) is established under a regulation issued prior to the enactment of this paragraph. Upon application and a proper showing of his prices and costs by any person subject to a ceiling price, the President shall adjust such ceiling price in the manner prescribed in clause (1) of the preceding sentence. For the purposes of this paragraph the term "costs" includes material, indirect and direct labor, factory, selling, advertising, office, and all other production, distribution, transportation, and administration costs, except such as the President may determine to be unreasonable and excessive.

On August 23, the President sent to the Congress a message recommending, among other things, the repeal of that paragraph. Hearings were held by your committee on August 30 and 31. At the close of the hearings S. 2092 was introduced and referred to your committee. Your committee referred the bill to a subcommittee which held further hearings on September 13, 14, 17, 18, and 19. The subcommittee amended S. 2092 and reported it to the full committee. The full committee amended it further and voted to report a clean bill which would be introduced and which would contain the language agreed upon.

INTENT OF SECTION 402 (d) (4)

The intent of section 402 (d) (4) was stated as follows in the report of the committee of conference which accompanied the Defense Production Act Amendments of 1951:

> This roll-back amendment will permit the Administration to roll back the price of all gougers to a fair and reasonable level but will protect the fair and reasonable profit of those who have merely added to their prewar prices the necessary and unavoidable costs of doing business which they have since incurred.

After extended further consideration of the problem, your committee continues to hold the view that the intent cannot be achieved by the outright repeal of section 402 (d) (4). While such a repeal would permit the Administration to roll back the prices of gougers, it would leave too large an area of Administration discretion as to the extent of any and all roll-backs on individual commodities. In the absence of such a provision as 402 (d) (4), manufacturers' and processors' prices could be rolled back to an undefined extent, and with possible serious results. Your committee believes, as it said in the report on the Defense Production Act Amendments of 1951, that the threat of future roll-backs, possibly even to pre-Korean price levels, was acting or might act as a deterrent to production by imposing undue risk on processing, financing, and distribution of commodities. Producers should not be required or expected to go on indefinitely, not knowing whether prices will be rolled back to the pre-Korean level.

Your committee, being of the view that roll-backs should not be left entirely to administration discretion, does not therefore recommend the repeal of section 402 (d) (4).

HISTORY OF SECTION 402 (d) (4)

The first sentence of section 402 (d) (4) was originally proposed by your committee as a limitation on the President's authority to roll back prices of agricultural or industrial commodities. As adopted by the Senate it provided that after the enactment no ceiling price should become effective which is below either (*a*) the price prevailing just before the date of issuance of the regulation or order establishing such ceiling price, or (*b*) the price prevailing during the period January 25, 1951, to February 24, 1951, inclusive.

The second sentence of 402 (d) (4) grew out of a provision adopted on the floor of the Senate as an amendment to the committee provision. This provision permitted roll-backs of prices of materials (other than agricultural commodities) to a period prior to January 25, 1951, if such prices reflected adjustments for increases or decreases in actual factory and labor costs, including reasonable allowances for other costs occurring subsequent to such period. As originally proposed the provision required the prices and adjustments for cost changes to be those of the individual seller, but before adoption it was modified so as to permit industry-wide adjustments for cost increases and decreases. In addition, as originally proposed the provision required adjustments for increases and decreases in all costs, but as adopted by the Senate it required adjustments for increases or decreases in actual factory and labor costs and reasonable allowance for other costs.

The House, on the other hand, adopted a limitation on price roll-backs only with respect to agricultural commodities, including livestock. The House amendment provided that no ceiling should be established or maintained for any agricultural commodity, including livestock, below 90 percent of the price received (by grade) by producers on May 19, 1951, as determined by the Secretary of Agriculture.

Thus, when the Senate and House bills went to conference, the Senate had adopted a provision forbidding roll-backs below either current price levels on January–February price levels, with an exception permitting roll-backs on materials beyond that point if the prices reflected the specified cost-adjustment formula. The House had adopted a limitation on agricultural roll-backs but none on industrial roll-backs.

The committee of conference recommended acceptance of the House amendment limiting roll-backs on agricultural commodities, including livestock.

The committee of conference also recommended acceptance of your committee's original first sentence of 402 (d) (4), providing that after its enactment no ceiling price on any material (other than an agricultural commodity) or any service should become effective which was below the lower of (*a*) the price prevailing just before the date of issuance of the regulation or order establishing such ceiling price, or (*b*) the price prevailing during the period January 25, 1951, to February 24, 1951, inclusive.

The committee of conference further recommended an additional provision that any person subject to a ceiling may, upon application and a proper showing of his prices and costs, receive an adjustment of his ceiling prices in the manner prescribed in clause (1) of the second sentence of section 402 (d) (4).

To summarize, the Senate accepted the House limitation on agricultural roll-backs. The differences between the House bill, with no provision regarding industrial roll-backs, and the Senate provision allowing such roll-backs beyond January 25 if industry-wide cost increases or decreases adjustments were allowed, were compromised by allowing such roll-backs only if they (1) went back to the highest price between January 1 and June 24, 1950, and reflected adjustments for cost increases or decreases to July 26, 1951, or (2) were provided for in regulations already issued. In addition, the compromise added a provision allowing an individual seller, upon a proper showing, to have any ceiling price adjusted to cover his prices and costs in the manner prescribed in clause (1) of the second sentence of section 402 (d) (4).

POSSIBLE DIFFICULTIES OF ADMINISTRATION

Subsequent to the enactment of the Defense Production Act Amendments of 1951, it was stated that the administration of section 402 (d) (4) was likely to create substantial difficulties. In the course of the hearings held by your committee, it became apparent that the section for the most part would not cause any unusual difficulty in administration. Evidence was presented, however, which led your committee to believe that some difficulties might arise from the provision which allows any manufacturer or processor to make application to the President for adjustment in his ceiling price for any material the ceiling price of which has been set below the highest price prevailing between January 1 and June 24, 1950, adjusted for increases and decreases in all costs up to July 26, 1951.

This provision requires adjustment of the ceiling price concerned for increases and decreases of all costs of the material subject to the ceiling price. In the view of your committee the provision would not cause any serious difficulty in the case of a manufacturer or processor producing only a single material since all his costs are directly related to that material. However, a substantial part of American business is organized in companies which produce more than one material.

Your committee understands that such companies usually have little difficulty in determining so-called direct costs of their products. Most of them, however, find it difficult, and some find it practically impossible to determine the exact amount of so-called indirect and overhead costs which is to be attributed to each of their products.

While direct costs can usually be allocated to specific products at the time when they are incurred, accountants have found no uniform or satisfactory way of allocating indirect costs to individual items. Therefore, those manufacturers who base their sales prices on cost substitute for exact measurement of their indirect costs what in effect is an estimate based on experience. At some later time, customarily at the end of an accounting year, it is usually found that there are substantial differences between the estimates and the actual results. With the majority of manufacturers the problem never arises because they do not have cost-accounting systems sufficiently elaborate to make even an estimate of indirect costs attributable to each of their products.

A company, for example, manufacturing bicycles, lawn mowers, and floor lamps faces the problems of allocating its costs over the three products. It is relatively simple for this company to record the amounts of steel, brass, and other materials that go into each of its products. Also, it can keep records to show the amount of direct labor that has been used in the production of each product. In other words, this company can successfully determine the direct cost of each of its three products without undue difficulty. The indirect factory expenses are found to be more troublesome when an attempt is made to allocate them. There is no one correct way to charge, for example, the taxes on the factory over bicycles, lawn mowers, and floor lamps. In the area of selling, administrative, and other expenses, the problem becomes even more difficult. As soon as this company passes beyond the direct cost stage for allocation purposes, its problems mount rapidly, its work increases greatly, and its results become much less reliable. One might think that allocation would simply be made on the basis of selling price or sales revenue. In most instances, however, there is no relationship between the selling price of a product and the indirect expenses involved in the manufacture and distribution of that product. Indirect costs may vary from 35 to 1,000 percent of direct costs and represent correspondingly varying portions of the sales price.

Considering that the exact indirect cost figures for individual products are difficult to compute or estimate and equally or more difficult to check, gougers would be tempted to exaggerate their cost increases on a product basis and the administrative agency might often be unable to detect such manipulation. The overwhelming majority of manufacturers, no doubt, would refuse to engage in any such practice. In protection of their legitimate interests, however, they would in every case of doubt have to use a somewhat higher rather than lower figure, and because of the many estimates that would have to be made, the final results, although arrived at in good faith, might still represent a substantial overstatement of actual costs per product. As a consequence this procedure in the opinion of your committee might not lead to fair adjustments which were desired by the Congress when it adopted the provisions. Instead, it might lead to higher, and unnecessarily high, price levels.

Your committee has always believed in even-handed justice to both producers and consumers and this continues to be its primary objective. The repeal of section 402 (d) (4) may lead to unnecessary hardships for producers. On the other hand the difficulties in administering this provision, as presently enacted, may result in price increases to the detriment of the consumer. The committee therefore recommends the middle-of-the-road approach offered by S. 2170.

ANALYSIS OF S. 2170

The first sentence of S. 2170 beginning on line 6 makes no substantive change in the first sentence of section 402 (d) (4) as now in effect. It makes language changes only for purpose of clarification in order to make perfectly clear the intention of Congress.

Section 402 (d) (4) was not intended to cover wholesalers and retailers since they are already provided for in 402 (k). Nor are pricing procedures of this provision applicable to all services or importers. The committee did include, under this provision, industrial services. The intent of Congress, therefore, is made clear in S. 2170 by making this provision applicable to selling prices of manufacturers and processors and the charges for industrial services.

As now in effect the first sentence of section 402 (d) (4) provides that "no ceiling price on any material * * * or * * * service shall become effective which is below * * * the price prevailing" at a certain time (either January 25–February 25, 1951; or just before the issuance of the regulation). S. 2170 substitutes the provision that "no ceiling price regulation * * * shall become effective which establishes a level of prices * * * below * * * the level prevailing" at the prescribed time. The change is recommended to spell out in greater detail the meaning of the original language as intended by Congress. This clarification is desirable in order to avoid needless dispute or litigation.

The point is that there is no single "price" or "ceiling price" for a material, but rather a large number of individual prices. These various prices can be accurately described only in terms of a level of prices which form a composite that can be accurately described only in terms of level of prices.

For example, the "material" sulfuric acid is a product with varying prices for different grades, qualities, quantities, locations, classes of customers, method of delivery, etc. There are several additional elements of variation. Sulfuric acid is sold under long-term contracts (often a year or more). Thus, during a period of price change, deliveries under new contracts will be at different levels than under old contracts. Likewise, prices for a given grade and location may and do vary depending upon the bargaining ability of buyer and seller, their needs to obtain (or dispose of) acid at the time of the contract, and similar factors. Finally, in a period of changing price levels, the policies of different manufacturers will vary. Some will promptly push up (or down) their prices in response to increasing (or decreasing) demand, while others try to maintain stable prices and change them only under extreme circumstances. Thus, if uniform dollars-and-cents ceiling price were established applicable to all sellers for 66° sulfuric acid of given standard of purity, in tank-car lots, delivered in Pittsburgh, to a particular class of customer, this ceiling would be a part of a level of ceiling prices (with appropriate variations for location, quantity, etc.). And this level of ceiling prices would be equal to or greater than the level of prices prevailing in the specified period. The purpose of the modification is to make perfectly clear that this is the intention of Congress despite the fact that individual ceiling prices might represent roll-backs for some individual sales and increases for others.

If each of these individual ceiling prices were set separately on the basis of sales of the particular grade that happened to be made at the particular location, etc., during the particular base period, as perhaps on the basis of some single day before the issuance of the regulation, these prices might be in badly distorted relationship to each other. Instead, these prices must be set so as to form a workable pattern.

At the same time your committee wants to make it clear that the phrase "level of prices" cannot be interpreted as permitting the Office of Price Stabilization to introduce unreasonable or unjustifiable changes in the customary price structure of business. It would not be permissible, for instance, to force manufacturers to put an identical price tag on all grades of sulfuric acid, or on all five-tube radios, or on all low-priced passenger automobiles, without regard for historical differentials.

The second sentence of S. 2170 beginning on line 6 of the second page makes no substantive changes in the second sentence of section 402 (d) (4) as now in effect. The changes made are simply for the purpose of making clear the intention of Congress.

Clause (1) of the second sentence allows roll-backs below the levels specified in the first sentence of the provision provided that the regulation reflects the highest level of prices prevailing during a representative base period between January 1 and June 24, 1950, adjusted for increases or decreases in costs up to July 26, 1951. The present second sentence fixes as the base the highest price between January 1 and June 24, 1950.

Because of the administrative difficulties of determining prices and costs as of a single date, determination of the highest price level between January 1 and June 24, 1950, is permitted by S. 2170 to be made as of a representative base period between such dates, and cost changes are permitted to be figured from such base period to July 26, 1951.

The wording of the formula in clause (1) of the second sentence has been shortened, and provides that the regulations covered by clause (1) shall reflect the formula which is more fully spelled out in the following sentence of S. 2170. Section 402 (d) (4) as now in effect states that prices be "based upon" the high price and "reflect" adjustments for increases or decreases in cost. The language of S. 2170 makes clear the intention of the Congress that such regulations must meet the standard, rather than that they must be constructed in a single way. In other words, obviously Congress did not require the Office of Price Stabilization to issue only formula-type regulations; the Office of Price Stabilization may issue dollars-and-cents regulations, provided they meet the standard of the formula in clause (1).

Clause (2) of the second sentence of section 402 (d) (4) is preserved by S. 2170 without change and refers to regulations issued prior to the original enactment of section 402 (d) (4).

The third sentence in S. 2071 beginning on line 15 of page 2 has been inserted in order to modify the original provision for reflection of changes in indirect costs and to avoid possible difficulties of administration discussed earlier in this report. The previous provision for disallowance of unreasonable or excessive costs has been taken care of by a provision making it clear that the costs referred to are the necessary and unavoidable costs of doing business whether labor, material, and transportation costs, or any other costs, thus permitting any cost increases which are not necessary and unavoidable to be disallowed. When necessary and unavoidable costs are of a type other than labor, material, and transportation costs, they may be covered by a reasonable allowance as determined by the President, including the specific indirect costs which he finds are properly allocable to the production and sales of materials and charges for industrial services in question. This provision reduces the previously described cost accounting difficulties.

The fourth sentence of S. 2170 beginning on line 25 of page 2 has been substituted for the third sentence of section 402 (d) (4) as now in effect. It was the intention of the Congress, and should in the opinion of your committee remain the intention of the Congress, that a manufacturer, processor, or a seller of industrial services be protected against the hardships of unlimited roll-backs. This is the principal purpose of section 402 (d) (4) as now in effect, and likewise of S. 2170. Except for section 402 (d) (4), the present law leaves such relief in the discretion of the President. The fourth sentence of S. 2170 makes hardship relief mandatory. Any manufacturer, processor, or seller of industrial services whose ceiling prices result in financial hardship to him becomes entitled to an individual adjustment of his ceiling prices whether or not such prices represent roll-backs. The relief will be computed in accordance with the application of the formula prescribed in clause (1) to the costs and prices of the seller involved, and in the amount necessary to relieve such financial hardship, whether that means reduction of a roll-back or an increase in ceiling prices.

The last sentence of section 402 (d) (4) has been eliminated in S. 2170 because it is taken care of by the newly inserted third sentence.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 96—82d CONGRESS

CHAPTER 275—1ST SESSION

S. 1717

AN ACT To amend and extend the Defense Production Act of 1950 and the Housing and Rent Act of 1947, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Defense Production Act Amendments of 1951". * * *

PRICE AND WAGE STABILIZATION

SEC. 104. * * *

(e) Subsection (d) of section 402 of the Defense Production Act of 1950 is amended by adding at the end thereof the following new paragraph:

"(4) After the enactment of this paragraph no ceiling price [on any material (other than an agricultural commodity) or on any service] *regulation applicable to the sales of manufacturers or processors of any materials or the charges for industrial services* shall become effective which [is] *establishes a level of prices for such sales or charges* below the lower of (A) the [price] *level* prevailing *for such sales or charges* just before the date of issuance of the regulation, [or order establishing such ceiling price,] or (B) the [price] *level* prevailing *for such sales or charges* during the period January 25, 1951, to February 24, 1951, inclusive. Nothing in this paragraph shall prohibit the establishment or maintenance of a ceiling price *regulation applicable to the sales of manufacturers or processors or the charges for industrial services* [with respect to any material (other than an agricultural commodity) or service] which (1) [is based upon the highest price] *reflects the highest level of prices prevailing during a representative base period* between January 1, 1950, and June 24, 1950, inclusive, [if such ceiling price reflects adjustments] *adjusted* for increases or decreases in costs [occurring subsequent to the date on which such highest price was received and prior to] *between such period and* July 26, 1951, or (2) is established under a regulation issued prior to the enactment of this paragraph. [Upon application and a proper showing of his prices and costs by any person subject to a ceiling price, the President shall adjust such ceiling price in the manner pressribed in clause (1) of the preceding sentence. For the purposes of this paragraph the term 'costs' includes material, indirect and direct labor, factory, selling, advertising, office, and all other production, distribution, transportation and administration costs, except such as the President may determine to be unreasonable and excessive."] *The adjustment for increases or decreases in costs prescribed in said clause (1) above shall include adjustment for changes in necessary and unavoidable costs, including all labor, material and transportation costs and a reasonable allowance, as determined by the President, for changes in all other necessary and unavoidable costs, including selling, advertising, office and all other production, distribution, and administration costs, which he finds are properly allocable to the production and sale of the materials sold by the manufacturers and processors or the charges for industrial services. The President shall make appropriate provision for adjustment for any such manufacturer or processor or seller of industrial services whose ceiling prices result in financial hardship to such manufacturer or processor or seller of industrial services. Such adjustment shall be made in accordance with the provisions of clause (1) above to the extent necessary to relieve such hardship."*

MINORITY VIEWS

INTRODUCTION

On July 31, 1951, the President of the United States signed into law the Defense Production Act Amendments of 1951. This statute (Public Law 96, 82d Cong.), was the result of months of public hearings, careful review of the strengths and weaknesses of the Defense Production Act of 1950, and extensive negotiation and compromise between conflicting bills passed by the Senate and the House of Representatives.

Seldom, if ever, has any comprehensive statute of this nature, so vitally affecting our national defense and security and the daily lives of our individual citizens, received such searching, sincere, and attentive inquiry, as the voluminous public hearings, committee prints, and other official and staff documents will show. Political parties were forgotten and the individual opinions of Senators and Representatives were reconciled, after a fair hearing to conflicting viewpoints and in the interest of the general welfare and the national security. The legislative process was complete and the time to adjust and improve administrative procedures to execute the law was at hand.

One of the provisions of the new law was section 402 (d) (4) of the Defense Production Act, as amended, the so-called Capehart amendment. This section of the present law is set forth on page 1 of the majority report.

THE PRESIDENT'S MESSAGE

On August 23, the President of the United States sent a message to the Congress recommending "certain changes in the Defense Production Act of 1951." Among these recommended changes was a request for the repeal of the so-called Capehart amendment. In our judgment, the language used by the President in his message, in reference to this request, was, to say the least, injudicious and unwise. Careful reading of the President's message shows that reasoned economic arguments and a recognition of the basic facts of our industrial production machinery were conspicuous by their absence.

SECTION 402 (D) (4), THE SO-CALLED CAPEHART AMENDMENT

As explained in the majority report, the language of the so-called Capehart amendment resulted from a reconciliation of the conflicting positions taken by the Senate and the House on the general subject of manufacturers' prices. The Capehart amendment was carefully drawn to achieve the following objectives:

1. A roll-back of prices of those gougers who had profited unconscionably by Korean war inflation prior to the general price freeze order of January 26, 1951.

2. A recognition of the increased legitimate costs since Korea of those ethical sellers who had been caught in a squeeze between rising costs and the general price freeze of January 26.

3. A recognition of the work accomplished by the Office of Price Stabilization by affirming those ceiling prices established by regulations issued prior to August 1, 1951.

4. An irrevocable cut-off date of July 26, 1951, beyond which increased costs to the seller, of any character whatsoever, should be disallowed in fixing his ceiling price.

5. A stabilized price level from producer to consumer, after adjustment of out-of-line prices, both roll-backs and roll-forwards.

The intent of the Congress in enacting the Capehart amendment, particularly in regard to its roll-back features, was made abundantly clear in a section of the conference committee report on S. 1717, the Defense Production Act Amendments of 1951, which reads as follows:

PRICE ROLL-BACKS AND ADJUSTMENTS

The Senate bill provided that after enactment of S. 1717 no ceiling price shall become effective which is below either (1) the price prevailing just before the date of issuance of the regulation or order establishing such ceiling price or (2) the price prevailing during the period January 25, 1951, to February 24, 1951, inclusive. With respect to nonagricultural commodities the Senate bill permitted price roll-backs to a period before January 25, 1951, if the ceiling price reflects adjustments for increases or decreases in actual factory and labor costs, including reasonable allowances for other costs occurring subsequent to such period.

The House amendment placed a limitation on price roll-backs only with respect to agricultural commodities, including livestock, and provided that no ceiling shall be established or maintained for any agricultural commodity, including livestock, below 90 percent of the price received (by grade) by producers on May 19, 1951, as determined by the Secretary of Agriculture.

The conference substitute contains the provisions of the House amendment with respect to agricultural commodities including livestock. The committee of conference adopted a new paragraph relating to nonagricultural commodities or services. This provides that after the enactment of S. 1717 no ceiling price shall become effective which is below the lower of the price prevailing just before the date of issuance of the regulation or order establishing such ceiling price or the price prevailing during the period January 25, 1951, to February 24, 1951, inclusive. Price roll-backs are permitted provided the ceiling price either (1) is based upon the highest price received for the material or service between January 1, 1950, and June 24, 1950, inclusive, and reflects adjustments for subsequent increases or decreases in costs occurring prior to July 26, 1951, or (2) are established under regulations issued prior to the enactment of S. 1717. The conference substitute further provides that any person may, upon application and a proper showing of his prices and costs, receive an adjustment of his ceiling prices in the manner prescribed in clause (1) of this paragraph.

This roll-back amendment will permit the administration to roll back the price of all gougers to a fair and reasonable level but will protect the fair and reasonable profit of those who have merely added to their prewar prices the necessary and unavoidable costs of doing business which they have since incurred.

In light of these carefully considered objectives and the clearly expressed intent of the Congress, one can easily see why, in our judgment, the language used by the President in his message to the Congress was intemperate and ill-considered.

CHRONOLOGY OF KOREAN INFLATION

In order that the Congress may keep the recommendations of the President's message and those of the majority of the committee in proper perspective, we are providing a brief chronology of Korean inflation. Our introductory comments above touched on the passage of the Defense Production Act Amendments of 1951. But in order to legislate properly on stabilization of prices and the imbalance of price relationships and yet retain the stimuli for all-out production, the conditions existing between June 1950 and July 1951, and the reasons therefor, must be carefully noted.

June 25, 1950.—The United States entered the Korean war. In 10 days, the price index jumped 1.4 percent. Some sellers began to gouge the public unconscionably because of soaring consumer demand, while other sellers tried to hold the line and absorb such increased costs as they could.

July 19, 1950.—The President, nearly a month after he ordered troops into Korea, asked Congress to enact legislation to control production. He said price and wage controls were not necessary. The consumer price index had jumped 1.9 percent and the wholesale price index had gone up 4.4 percent.

August 1, 1950.—The President sent the Senate Banking and Currency Committee a letter saying a price-control program was not necessary. By this date, the wholesale price index had gone up 5.4 percent; the consumer index had gone up nearly 2 percent.

August 10, 1950.—The President told his press conference that the time was not in sight for price and wage controls.

September 8, 1950.—Congress passed a law giving the President absolute powers to control prices and wages along with other powers to control defense and nonessential production. By this date, the wholesale price index had gone up 7.5 percent, and consumer prices had jumped 2.6 percent over the June 25 Korea war date.

November 17, 1950.—The Chinese Communists entered the Korean war. There was still no use of price controls by the President, but the wholesale price index had gone up nearly 9 percent and the consumer index had gone up 4.6 percent.

December 16, 1950.—The President declared a state of emergency, but still refused to control prices, although he announced his intention to do so at some future date.

January 26, 1951.—The President ordered a general price freeze order. By this time, the wholesale price index had gone up 15 percent over June 1950, and the consumer price index had gone up 6.6 percent. It is interesting to note that the wholesale price jump was 5 percent and the consumer price jump was 3 percent in the 30 days during which the President let it be known that a price freeze was to be ordered.

February 27, 1951.—In 1 month after the price freeze order, the wholesale price index still moved up another 2.1 percent and consumers' prices advanced another 2.3 percent.

April 26, 1951.—The President's version of the new Defense Production Act Amendments of 1951 was introduced in Congress, reversing his stand on the need for price controls.

June 12, 1951.—Still operating under full authority to control prices, the administration permitted the wholesale price index to remain at 15.5 percent over the pre-Korea level and 1.7 percent above the price-freeze level. Consumer prices remained 2 percent above the price-freeze levels of January 26.

The Congress of the United States and its duly appointed committees do not legislate in a vacuum. All these general developments since June 1950 were well known, as well as price relationships of producers, middlemen, and consumers, other executive actions and inaction, good administration and maladministration by OPS, and a multitude of other factors. As noted in our introductory remarks, the arguments of various interests were carefully heard and balanced. Above all this, the interest of our general welfare and our national security in our death struggle with inflation was paramount. The result was certain amendments to the Defense Production Act, including section 402 (d) (4), the Capehart amendment. As far as we are concerned, this section should stand intact, at least in all its principles, and we are confident it is a solid basis for an increased tempo in the lick-the-Korean-inflation fight, if properly and efficiently administered.

PROPOSAL OF COMMITTEE MAJORITY

As amended and introduced as a clean bill, S. 2170 is presented by the majority as a middle ground between the present section 402 (d) (4) and the President's request for repeal of that section. But in order that there be no misunderstanding, let it be said that the committee majority amendment is no mere clarification of the existing Capehart amendment. If this were the case, and substantive changes cutting at the heart of principles of the Capehart formula were not included, S. 2170 would have the unanimous support of your committee and our minority views and suggestions would be unnecessary. But that is not the case, as we shall proceed to demonstrate.

In spite of the circumstances under which we were asked to act on repeal or revision of the Capehart amendment—circumstances which included the tone of the President's message as well as an absolute refusal on the part of the administration to make the new section work by issuing appropriate regulations, at least up to this date—we have listened carefully to suggestions by all competent witnesses. Our attitude is perhaps best indicated by a comment made by Senator Capehart, while discussing the amendment with Charles E. Wilson, the Director of the Office of Defense Mobilization. At that time Senator Capehart said to Mr. Wilson, as found on page 2812 of the committee hearings:

> I am perfectly willing to vote to change the technical language of any of this bill if it will help you and be better for the country. I would change the technical language and we might be able to make quick progress. * * *

In keeping with this announced desire, Senator Capehart offered certain language when the committee met in executive session. This consisted of two simple changes which would have resolved, once and for all, any alleged difficulties as to the establishment of proper and workable standards in administering section 402 (d) (4).

The first change would have substituted the term "level of prices" for the word "price" in several places in order to avoid any possible interpretation that industry-wide price ceilings could not be used. In any event, contrary to the contention of some administration spokesmen, such a change would be only an exercise in semantics. As the OPS economic adviser, Mr. Gardner Ackley, testified, there is no conflict between the word "price" and the term "level of prices," as used in this connection, with the intent of Congress in mind.

The other change would have inserted in clause (1) of section 402 (d) (4), after the date June 24, 1950, the phrase "under a formula or formulas reasonably designed to reflect." This proposed change would have dispelled any lingering doubt as to the authority of OPS in establishing and maintaining its own price ceilings. The argument was presented time and again—of however doubtful validity—that the clause authorizing an individual seller to make a showing of his costs and obtain adjustment of his ceiling price would somehow be self-executing. In other words, it was contended the seller could, in effect, automatically set his own ceiling price. To dispel this erroneous idea, the addition of the above phrase would have made it certain that authority resides in the President, not the seller, to set price ceilings under reasonable formulas.

However, these constructive technical changes were rejected, and the majority of the committee went on to approve S. 2170. The majority has presented its arguments as to what the bill means and why this new approach was chosen. We shall set forth what we think S. 2170 would do, and particularly what it would not do.

In our considered judgment, S. 2170, as approved by the majority of the committee, would have the following results:

1. The American consumer would be unjustly penalized in the months ahead, with no real protection in the committee bill when decreased civilian supply and constant or increased demand begins to bear down hard in the winter and spring of 1952. Why is this the case? The answer can be found in careful and minute examination of the language of the bill.

Contrary to the present Capehart amendment, which fixes a hard and fast cut-off date of July 26, 1951, beyond which no increased costs can be allowed in fixing a ceiling price or ceiling prices, the committee bill only appears to do so. The July 26 cut-off date in the committee bill is only tied in with the roll-back provision, which does not have to be exercised. In the Capehart amendment, if fair and equitable regulations were promptly issued—or modifications of present regulations—the net result of adjusted general ceiling prices and the approval or disapproval of cost applications by individual sellers would be a fixed level of prices by the end of, say, 1951. By use of the Capehart formula this new adjusted price level—which would be about the same by way of some roll-backs on the gougers and some roll-forwards to the honest sellers with bad cost positions—could be held with no and's, if's, or but's. The only relief would fall in the financial hardship category. But in the committee bill, with no mandate to use the roll-back provision, with the authority to ignore other adjustments, the price situation could be left in mid-air, with all the inequities involved in the present situation. The consumer would be the loser in the ensuing uncertainty.

2. The prices charged by the post-Korean pre-January 26, 1951, gougers would be relatively more secure. Those sellers who played fast and loose with the North Korean-Chinese Communist scare buying sprees and increased consumer demands could not be detected as easily as under the increased cost formula laid down in the Capehart amendment. There is no mandate to roll these prices back, as there is in the mechanics set forth in section 402 (d) (4).

3. The honest, ethical businessman could have no assurance of an adjusted price, which he deserves from increased costs up to July 26. There is nothing in the committee bill to require the cost formula as drafted therein to be used. Previous unfair regulations or the general

price freeze of January 26 could stand, with no mandatory relief due to increased costs. This might be the only reward to the manufacturer who tried to hold his prices from soaring sky high—a continued inequitable cost-price squeeze.

4. The only relief to an individual manufacturer would remain "financial hardship," not a computation of his legitimate, necessary, and unavoidable costs as provided in the Capehart amendment. What does "financial hardship" mean according to OPS? It means very simply, after long delays in processing a petition for relief, that a manufacturer need not operate at a loss. If this is not a form of negative profit control when a seller has to prove he is suffering a sustained loss, we are at a loss as to how else to define it. As proof for our contention that some cost-relief formula should be afforded a manufacturer, and not OPS-designed "financial hardship," we offer the following OPS regulation stating procedures and standards on this subject:

GOR-10

ADJUSTMENTS OF CEILING PRICES FOR MANUFACTURERS

(Originally issued effective May 11, 1951, 32A CFR, Chapter III, 16 F. R. 4455, as subsequently amended) [1]

SECTION 1. *What this regulation does.* This regulation permits a manufacturer to apply for an upward adjustment of his ceiling prices established under any other regulation, if as a result of such ceiling prices, the manufacturer would be forced to operate at a loss with respect to his manufacturing operations, either for his entire business or for a separate plant or factory. This regulation does not, however, prevent a manufacturer, who is eligible for an adjustment under some other regulation, from applying for an adjustment under that regulation.

[SEC. 1 as amended by Amendment No. 1, effective June 7, 1951.]

SEC. 2. *Who may apply.* (a) A manufacturer may file an application for adjustment under this regulation where:

(1) His existing ceiling prices would require him to operate at a loss with respect to his manufacturing operations, either for his entire business or for a separate plant or factory, Provided, That no portion or proration of central office costs or expenses may be included in calculating such loss for a separate plant or factory; and

[(1) as amended by Amendment No. 1, effective June 7, 1951.]

(2) The adjusted prices for which he applies will not be substantially out of line with the ceiling prices established for other sellers of similar commodities.

(b) The manufacturer must show that under his existing ceiling prices his manufacturing operations, either for his entire business or for a separate plant or factory, have been actually conducted at a loss during a recent representative period of operation of at least one month; or that they would have been conducted at a loss if the commodities involved had been manufactured in his customary quantities and proportions; or that, due to the occurrence of a substantial and continuing change of some element affecting costs and profits, a projection of his operations clearly shows that he will be immediately operating at a loss.

[(b) as amended by Amendment No. 1, effective June 7, 1951.]

(c) The loss involved must be attributable to the level of his existing ceiling prices and not to any of the following:

(1) Seasonal, temporary or nonrecurring factors affecting his operations.

(2) A reduction in volume of production below the normal economical capacity of his plant.

(3) The payment of unlawful wages or excessive salaries or of unlawful or excessive prices for materials.

(4) The incurring of factory overhead costs or of selling, administrative and general costs which are abnormally high relative to sales or other costs unless such excess is demonstrated by clear and convincing evidence to have been unavoidable in the exercise of sound business judgment and management.

[1] Amendments are reflected in the text of the order.

(5) Any transactions with affiliated corporations or businesses which either are of a kind which would not result from arm's-length bargaining or differ from transactions customarily entered into with such affiliated concerns.

(6) Reserves for contingencies, or for any other unusual factors.

SEC. 3. *Information to be submitted.* A manufacturer seeking an adjustment under this regulation shall file an application with the Office of Price Stabilization, Washington 25, D. C., and include the following:

(a) His name and address, a description of his manufacturing facilities and the commodities he manufactures, and a statement of the principal types of customers to whom he sells.

(b) Where he was in operation for such periods, detailed annual profit and loss statements for the years 1946 through 1949, and both an annual statement and if he regularly prepares them, quarterly profit and loss statements for the year 1950 and each quarter since then.

(c) A detailed profit and loss statement covering his most recent period of operations under his existing ceiling prices, of one month or more, for which such a statement can be prepared, together with a careful explanation of how it was prepared, including particularly a justification of any estimating procedures used in its preparation, and where an actual loss has not yet been experienced, clear and convincing evidence first, that changes in conditions which have already occurred will cause him immediately to incur a loss and, second, what the minimum amount of this loss will be. If the manufacturer is seeking an adjustment on the basis of a loss with respect to the operations of a separate plant or factory, this profit and loss statement for a recent period should cover his operations in that plant or factory, should indicate that no portion or proration of central office costs or expenses has been included in calculating the loss for the separate plant or factory, and should be accompanied by a profit and loss statement for his entire business covering the same recent period.

[(c) as amended by Amendment No. 1, effective June 7, 1951.]

(d) A showing that the loss in his current operations is not due to any of the factors in section 2 (c) of this regulation.

(e) For the commodities subject to ceiling price regulation, a statement of his existing ceiling prices for sales to his largest buying class of purchaser, including delivery terms, allowances, premiums and extras, deductions, guarantees, servicing terms and other terms and conditions of sale, a schedule of his price differentials to his other classes of purchasers, and a statement of the ceiling price regulations under which his ceiling prices are established.

(f) A list of his principal competitors, and a statement of their ceiling prices for similar commodities, together with data showing the past relationships of his prices to the prices they have charged.

(g) A proposed schedule of adjusted ceiling prices, and a demonstration that, if these prices were charted, his operations would be at a break-even position.

SEC. 4. *Action on applications.* The Office of Price Stabilization will grant or deny, in full or in part, an application under this regulation, or request further information, and may, as a condition of granting an application in full or in part, require the submission of reports of subsequent operations. If, thirty days after acknowledgment of receipt of an application, none of the actions listed above has been taken, the manufacturer may sell at his proposed adjusted ceiling prices until such time as the OPS notifies him that such prices have been disapproved. OPS may at any time revoke or modify adjustments under this regulation.

SEC. 5. *Adjustment in resale prices.* In connection with any order granting an adjustment in the manufacturer's ceiling prices, OPS may also adjust the ceiling price of any person who resells the commodity in the same form, to the extent deemed necessary in the judgment of the Director of Price Stabilization or his duly authorized representative.

SEC. 6. *Delegation of authority.* The National Office of the Office of Price Stabilization may refer any application for adjustment filed pursuant to this regulation to the appropriate Regional Director. Any Regional Director, or any District Director authorized by the appropriate Regional Director, may in case properly referred to him take action in accordance with sections 4 and 5 of this regulation.

SEC. 7. *Definitions.* "Manufacturer" means any person who is engaged in business other than as a wholesaler or retailer.

[Sec. 7 as amended by Amendment No. 1, effective June 7, 1951.]

SEC. 8. *Geographical applicability.* The provisions of this regulation are applicable to the United States, its Territories and possessions, and the District of Columbia.

[Sec. 8 as amended by Amendment No. 2, effective June 13, 1951.]

Effective date. This General Overriding Regulation shall become effective May 11, 1951.

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OUR SUBSTITUTE PROPOSAL (S. 2155)

As we have stated above we prefer to see the so-called Capehart amendment stand intact in the present law, with, perhaps, one or two technical changes in the interest of administrative clarity. But, in addition to being outvoted on this position by the majority of the committee, we have come to certain other conclusions which prompted our introduction of a new substitute proposal, S. 2155, on September 21. We shall offer the language of S. 2155 as a complete substitute for the majority committee bill, S. 2170.

The reasons which prompted this action are simple. First, we have come to the conclusion that the Administration has no intention of making any honest effort to administer effectively the Capehart amendment. From July 31 to the present date no regulation or regulations to carry out its provisions have been forthcoming. The simple action of affirming and reactivating previously issued manufacturers' regulations such as CPR 22—with stated procedures for subsequent adjustments—has not been taken. In short, from the time of passage of the new law, all we have had are inaction, arguments, and propaganda. The only losers in this type of impasse are our national security, our citizens, and our production effort.

Secondly, with this total lack of any possible sympathetic administration in mind, we believe that the Congress must once again shoulder the burden of laying down the gantlet against inflation. Congress did this effectively in the summer of 1950 in the original Defense Production Act when it forced necessary price and wage control authority on an unwilling President. But the President refused to act promptly to quell Korean inflation. By the time he moved, tardily and months later, inflation had taken a terrible toll and our economy was out of kilter. After some 6 months of spasmodic and indecisive action, following the January 26 freeze date, OPS had only made matters worse. Now it refuses to act further to straighten out price relationships because it does not agree with the action of Congress in July and because it wants absolute authority to meddle and fumble along as before.

Under these circumstances, which border on economic anarchy, we believe Congress must act affirmatively and positively. We must force the OPS to adjust the present messy price structure with no escape mechanisms such as vague language, alternative procedures, and hypothetical cut-off dates.

In order to do this and present the issue to the Senate in the clearest and most unmistakable way,we have made some major compromises and concessions in our own personal position. To demonstrate this, we point out that our substitute proposal, S. 2155, uses exactly the same cost formula, word for word, as that employed as an alternative in the majority committee bill. By the use of the test of "necessary and unavoidable" costs, considerable administrative discretion would be given to the President, and hence to OPS. We have also adopted the financial hardship language of the committee majority, escape clause and all. In following the majority approach, we seek to establish our complete good faith and not quibble about details, important though they are.

But our substitute proposal, S. 2155, clears the air on three important matters:

1. It would force the President (through his agent, OPS) to issue appropriate regulations within 60 days, covering ceiling prices on the sales of all manufacturers or processors and the charges for industrial services. This would mandate a complete revision of all price levels, according to the flexible cost formula adopted by the committee majority and used in our substitute as well.

2. It would employ a mandatory cut-off date of July 26 in allowance for sellers' increased costs in ceiling price levels, with but one exception.

3. It would allow a manufacturer, processor, or industrial service establishment to apply for an increased price ceiling beyond the July 26 cost cut-off date if, and only if, he is paying increased labor costs beyond that date.

We believe this would enable us to tackle and stabilize prices head-on well before the full fury of civilian product cut-backs and still increased public spending power are felt in the winter and spring of 1952. Under our proposal, after 60 days, the consumer, producer, farmer, and workingman would know where he stands. Gougers would be caught and underpriced products would be given relief.

Best of all, such a statutory program as we propose would help crystallize the chicken-and-the-egg, dog-chasing-his-tail argument about prices and wages. With labor costs paid by the seller the only allowable cost in increased price levels after July 26, the hand of the Wage Stabilization Board would be strengthened. On the other hand, if, in the interests of equity and fair play, the WSB grants industry-wide or individual plant wage increases after July 26, the seller could apply for a new price on the basis of "necessary and unavoidable" labor costs. This would be only fair and equitable to the seller.

We agree with Charles E. Wilson that inflation can't be "stopped" but only "slowed down." We believe our substitute bill, S. 2155, would reduce it to a slow walk and not a trot or a gallop, as is implicit in the committee bill, at least insofar as prices and price levels are concerned.

For the information of the Senate and for comparative purposes our proposed substitute language, as contained in S. 2155, is reproduced at this point:

(4) The President, as soon as practicable and in any event no later than sixty days after the enactment of this paragraph, shall issue and make immediately effective appropriate regulations providing for the establishment and maintaining of a level of prices for all sales of manufacturers or processors and all charges for industrial services which reflects the highest level of prices prevailing during a representative base period between January 1, 1950, and June 24, 1950, inclusive, adjusted for increases or decreases in costs between such period and July 26, 1951. Thereafter no price ceiling shall be increased except to the extent necessary to reflect direct and indirect labor cost increases occurring after July 26, 1951, and paid by the seller. The adjustment for increases or decreases in costs shall include adjustment for changes in necessary and unavoidable costs, including all labor, material and transportation costs and a reasonable allowance, as determined by the President, for changes in all other necessary and unavoidable costs, including selling, advertising, office and all other production, distribution, and administration costs, which he finds are properly allocable to the production and sale of the

materials sold by the manufacturers and processors or the charges for industrial services. The President shall make appropriate provision for adjustment for any such manufacturer or processor or seller of industrial services whose ceiling prices result in financial hardship to such manufacturer, or processor or seller of industrial services, and such adjustment shall be made in accordance with the provisions of the preceding sentence to the extent necessary to relieve the financial hardship.

HOMER E. CAPEHART.
JOHN W. BRICKER.
ANDREW F. SCHOEPPEL.
EVERETT MCKINLEY DIRKSEN.

O